

IN THE DRAWINGS:

Kindly amend the drawings, without prejudice, without admission, without surrender of subject matter, and without any intention of creating any estoppel as to equivalents, as follows:

Please replace previously filed Figure 4 with the new Figure 4 as attached hereto.

REMARKS

Reconsideration and withdrawal of the rejections of the application are respectfully requested in view of the remarks and amendments herein. The Examiner is thanked for withdrawing the §103 rejections and the obviousness-type double patenting rejection over Molitor.

I. STATUS OF THE CLAIMS AND FORMAL MATTERS

Claims 15, 21 and 24-28 are now pending. Claims 1-14, 16-20, 22, 23 and 29 have been cancelled, without prejudice, without admission, without surrender of subject matter, and without any intention of creating any estoppel as to equivalents.

No new matter is added.

It is submitted that these claims are in full compliance with the requirements of 35 U.S.C. §112. The amendments to the claims and the remarks herein are not made for the purpose of patentability within the meaning of 35 U.S.C. §§ 101, 102, 103 or 112; but rather the amendments and remarks are made simply for clarification and to round out the scope of protection to which Applicants are entitled.

Applicants have herein cancelled the non-elected claims. Applicants reserve the right to pursue such non-elected subject matter in one or more divisional applications.

II. THE OBJECTION TO THE DRAWINGS IS OVERCOME

The drawings were objected to because Figure 4 was filed in color, and is not distinguishable when printed in black and white. Applicants respectfully submit that the amendment herewith renders the objection moot. A new Figure 4 has been provided wherein the colors used in the graph have been replaced with prints in black and white. Applicants respectfully submit that submission of the new Figure 4 does not constitute new matter as the content of the Figure has not been altered. Consequently, reconsideration and withdrawal of the objection to the drawings is respectfully requested.

III. THE DOUBLE PATENTING REJECTIONS ARE OVERCOME

Claims 15, 21 and 24-28 were rejected on the grounds of nonstatutory obviousness-type double patenting as allegedly being unpatentable over claims 1, 2, 8 and 14-17 of U.S. Patent

6,713,068. This rejection is a modification of the previous double patenting rejection under 35 U.S.C. §101. The rejection is respectfully traversed.

The Office Action indicates that although there is difference in claim scope between the claims of the present application and U.S. Patent No. 6,713,068, the “vaccine composition was identical in both cases”. Office Action at 4. The Office Action further alleges that “the ability to protect with a single dose is seen as an inherent characteristic of the previously patented vaccine, particularly for the preferred embodiment used in the examples” such that “the instant vaccine compositions are not seen as patentably distinct from the previously patented vaccine compositions.” Office Action at 4.

Although Applicants disagree with the rejection, in order to advance prosecution, a Terminal Disclaimer as to U.S. Patent No. 6,713,068 will be submitted under separate cover.

Therefore, reconsideration and withdrawal of the double patenting rejections are respectfully requested.

REQUEST FOR INTERVIEW

If any issue remains as an impediment to allowance, an interview with the Examiner is respectfully requested prior to issuance of any paper other than a Notice of Allowance. The Examiner is additionally respectfully requested to telephonically contact the undersigned to arrange a mutually convenient time and manner for the interview.

CONCLUSION

In view of these amendments and remarks, the application is in condition for allowance. Early and favorable reconsideration of the application, reconsideration and withdrawal of the objections and rejections, and prompt issuance of a Notice of Allowance are earnestly solicited.

Respectfully submitted,
FROMMER LAWRENCE & HAUG LLP

By: /Angela M. Collison/
Thomas J. Kowalski, Reg. No. 32,147
Angela M. Collison, Reg. No. 51,107
(212) 588-0800